88-77

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1987

ROMEO URESTE,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

WRIT OF CERTIORARI TO THE
FIFTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Did the trial court err in instructing the jury with regard to "deliberate ignorance" in the Petitioner's trial for possession of marijuana with intent to distribute?

2. Did the courts below err in concluding that there was sufficient evidence to find that the Petitioner knowingly possessed marijuana?

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The Petitioner's conviction in a trial by jury was affirmed by the United States Court of Appeals for the Fifth Circuit in an unpublished opinion issued May 3, 1988, which is set forth in the Appendix at A-2.

JURISDICTION

The decision of the Fifth Circuit affirming the Petitioner's conviction was filed May 3, 1988. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 21, U.S.C. § 841(a)(1) and (b)(1)(B) provide in pertinent part:

Unlawful acts

(a) Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally--

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance;

. . . .

Penalties

(b) Except as otherwise provided in section 845, 845a, or 845b of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

. . . .

(1)(B) In the case of a violation of subsection (a) of this section involving--

. . . .

> (vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana [sic]:

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18, or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both.

STATEMENT OF THE CASE

On April 26, 1987, Petitioner Romeo Ureste was playing pool in an Edinburg, Texas bar habituated by truck drivers. In the course of the evening, Ureste was solicited by a man named Joe (whose last name Ureste could not remember) to drive a truck. Ureste gave Joe his telephone number and two nights later Joe called and offered a load to Fort Worth for $400. Ureste was instructed to go to a truck stop just north of Edinburg and pick up a tractor-trailer rig marked "F. Guajardo" and drive it to Fort Worth, Texas. Ureste got a ride with a neighbor to the truck stop, located the truck and began to prepare for the trip north. Ureste checked in the truck and located an invoice reflecting the trailer was loaded with cabbage. After opening the trailer doors and seeing the trailer loaded with cabbage and ice, Ureste gassed up and headed north.

Ureste proceeded to the Border Patrol Checkpoint seven miles south of Falfurrias where he was observed by the agent on duty to be extremely nervous. At the request of the agent, Ureste opened the rear doors of the trailer and the agent climbed into the trailer. The agent observed the rear of the trailer was neatly stacked with cabbage and ice but, in looking across the top, the agent could see the front end appeared to be loaded unevenly. The agent directed Ureste to pull the rig into "secondary" where the agent and Barko, the sniffer dog, crawled from the rear to the front of the trailer. At the front of the trailer, buried under two bags of cabbage, the agent and Barko discovered a cache of marijuana. Ureste was arrested, indicted, and tried on a single count alleging possession of marijuana. At the close of evidence, the trial court, over Ureste's objection, granted the prosecution's

request for a jury instruction on deliberate ignorance. The jury found Ureste guilty and the trial court assessed punishment at seven years confinement, a $50 assessment, and a four-year supervised release term.

Ureste's conviction was affirmed by the United States Court of Appeals for the Fifth Circuit on May 3, 1988, in an opinion which rejected the claims presented to this Court.

ARGUMENT

I. THE COURTS BELOW ERRED IN CONCLUDING THAT THERE WAS SUFFICIENT EVIDENCE TO FIND THAT THE PETITIONER KNOWINGLY POSSESSED MARIJUANA.

The evidence presented to the jury clearly showed that the Petitioner Ureste was driving a tractor-trailer rig which contained substantial quantities of marijuana buried under cabbage and ice. The sole point upon which the question of

guilt turned was whether or not Ureste was aware of the illegal nature of the contents of the trailer.

The government argued that (A) the agent's testimony describing Ureste as "completely nervous and far beyond any other person that [the agent]'d even checked there at the checkpoint" (R. Vol. 2 at 60) demonstrated that Ureste "had reason to believe that truck was loaded with marihuana [sic]" (R. Vol. 2 at 145); (B) Ureste's fee of $400 for driving the load was substantially more than the normal fee for an Edinburg-Fort Worth trip which "should" have put Ureste on notice the trailer was loaded with contraband (R. Vol. 2 at 145); and, (C) because Ureste's initial contact with the man who employed him came in a bar, Ureste should have been suspicious (R. Vol. 2 at 132). Upon those three allegations the government rested its entire case against Ureste.

Taking the allegations as follows:

A. Ureste's Nervousness. While there was conflicting testimony regarding Ureste's alleged nervousness, viewing the evidence in the light most favorable to the government, Glasser v. United States, 315 U.S. 60 (1942), we must accept Ureste as having been extremely nervous. However, the Fifth Circuit has held:

> On the issue of knowledge, the testimony of Officer Garcia indicated that Hendricks was nervous at the Hidalgo port of entry. Nervousness is a normal reaction to circumstances which one does not understand, and being stopped at a border was certainly one of those situations as alleged by Hendricks.

United States v. Williams-Hendricks, 805 F.2d 496, 500 (5th Cir. 1986). The Court found the evidence in Hendricks sufficient to support the verdict, but commented that nervousness was "inconclusive unless viewed in the context of other facts," id. at 500, which facts included

Hendricks' traveling with his son, Hendricks' ownership of the vehicle in which the contraband was found, and the son's confession. Id. at 501. In the instant case, those "other facts" are virtually inconsequential.

B. Ureste's fees: The evidence was uncontroverted that Ureste was to receive $400 for a trip for which the normal fee would be $125 or $130, but Ureste explained that when his prospective employer called him, the trailer had already been loaded and the employer's driver had taken sick and that was the reason for the premium pay (R. Vol. 2 at 106). The government offered no evidence to suggest this premium was unusual. Absent such evidence, one may follow the First Circuit opinion:

> In brief we think the government was asking the jury to draw inferences beyond their unaided competence. It may well be that to an experienced eye each of the above factors would have been

> dead giveaways . . . But a jury is unable to draw such inferences from its ordinary experience. Evidence was required.

United States v. Martin, 815 F.2d 818, 826 (1st Cir. 1987). The government failed to meet its burden of disapproving Ureste's explanation in any fashion.

C. Ureste's Employer's Initial Contact. Although the government argued that it was suspicious to meet a prospective employer in a bar (R. Vol. 2 at 132), the uncontroverted testimony and the only evidence offered specifically stated that the Midnight Bar was where company men and truck drivers "hang around" and where Ureste had secured his prior job (R. Vol. 2 at 108). As in United States v. Martin, supra, the government had the burden to offer some demonstrative evidence to the jury that Ureste's meeting a prospective employer in a truck drivers' hang-out

was something more than standard practice.

Having failed to support allegations B and C with any evidence, the government has not passed the test of United States v. Hendricks, supra, because there was no reasonable set of "other facts" within the context of which the jury could place Ureste's nervousness in order to raise an inference of knowledge to a conclusive level. The government failed to prove beyond a reasonable doubt that Ureste knowingly possessed marijuana.

II. THE TRIAL COURT ERRED IN INSTRUCTING THE JURY WITH REGARD TO "DELIBERATE IGNORANCE."

At the conclusion of the evidence, the trial court granted the request of the government to instruct the jury on "deliberate ignorance." When the trial court requested that the govern-

ment state the reason the instruction should be given, the government's response included the reasoning as follows:

> MR. BERG: Okay. In this case I think it can be given because the defendant, first of all, knew if in fact what he says is the way it actually happened--he knew that $400 to drive to Fort Worth was about more than three times the going rate of $125, that he knew the going rate to be. He consciously avoided really finding out what the purpose of the trip was about.
>
> There is circumstantial evidence of that, because if the man told him that he was afraid his cabbage was going to go bad on Sunday, he would have wanted him to drive on Sunday not Tuesday. So he consciously avoided finding out what the trip was really about because of that fact.

(R. Vol. 2 at 118.) As described in Argument I, the government failed to show that the circumstances of the drive did not warrant payment of $400, and the government either misunderstood or misrepresented the testimony regarding when Ureste was told the employer was afraid the cab-

bage would go bad. There was no testimony that the employer "was afraid his cabbage would go bad on Sunday"; the testimony elicited by the government on cross-examination of Ureste was that he had met the employer and given his telephone number to the employer on Sunday, but it was on Tuesday that Ureste was called to replace the sick driver. There was no suggestion the driver had been sick on Sunday or that the employer had loaded the cabbage on Sunday. The testimony was that on Tuesday the driver was sick, the cabbage was loaded, and a new driver was needed (R. Vol. 2 at 102 and 107-08).

In deciding to instruct the jury on deliberate ignorance, the trial court quoted the Eleventh Circuit instructions: "The instruction should not be given in every case in which the defendant may claim lack of knowledge, but only when there is evidence or an inference that the

defendant made a conscious effort to avoid positive knowledge" (R. Vol. 2 at 123). The judge went on to delineate the reasons why he believed the circumstances of Ureste's employment were suspicious and concluded:

> Frankly, Mr. Chapa, one of the good things about my job as a trial judge is in the event of conviction, your man will have the right to appeal on the record of this case. And those -- judges will be examining this case carefully and deciding whether or not I made a mistake. But I believe the deliberate ignorance in this case is appropriate because of the high amount of dollars for the job to be done, together with the defendant's own testimony that this event occurred on Tuesday and on Wednesday they were shutting off the water.

(R. Vol. 2 at 125.) The trial court failed to make any effort to reconcile the testimony of Ureste and Ureste's witness that upon arrival at the rig, "Well, we opened the doors. And we saw there was cabbage, a whole bunch of cabbage with a lot of ice" (R. Vol. 2 at 94) and, "And I took

the invoices of the invoice that says, 'cabbage'. So I said 'I want to look at it.' I opened the doors, saw cabbage stacked, had ice, the whole place cabbage" (R. Vol. 2 at 104). Considering this testimony in conjunction with the Border Patrol Agent's testimony that all he could see in the trailer was cabbage and ice until he and a dog crawled in the three-foot space between the cabbage and the trailer ceiling from one end of the trailer to the other and dug below two layers of sacks of cabbage near the far end of trailer to discover the marijuana (R. Vol. 2 at 61-66), the obvious conclusion is that the marijuana was well hidden and it took a trained law enforcement officer and a trained narcotics sniffer dog to discover it. The evidence clearly and uncontrovertedly shows that Ureste did look in the truck to verify he had what he thought he had and there is no suggestion in any testimony that "he

made a conscious effort to avoid positive knowledge." The Fifth Circuit has a long-standing position supporting the use of a "deliberate ignorance" instruction but has supported that position by stating:

> In U.S. v. Jacobs, 475 F.2d 270, 287-88 (2d Cir. 1973), the court reasoned that the supreme court's approval of the Model Penal Code definition of knowledge implies approval of an instruction that the knowledge requirement is satisfied by proof of a "conscious purpose to avoid learning the truth."

United States v. Restrepo-Granada, 575 F.2d 524 (5th Cir. 1978).

In Restrepo-Granada, the accused claimed he had been befriended by an American in Colombia who provided him a forged passport, a forged visa, and a suitcase already packed with the accused's clothes. Included in the suitcase were seven coat hangers which had been filled with four and one-half pounds of cocaine. The accused

testified for the three days he lived out of the suitcase he never noticed anything unusual because, with the exception of a shirt, he never changed clothes. Such circumstances are easily distinguishable from the case at bar in that Ureste was a trucker who previously secured employment in the bar where he was hired for this load, as opposed to the defendant in Restrepo-Granada who was befriended and helped to enter this country illegally with a suitcase provided by the helper. Ureste acted in a legal and reasonable manner in accepting employment, checking his load, and proceeding.

The Eighth Circuit has held:

> A conscious avoidance instruction is "properly given only when the defendant claims a lack of guilty knowledge and there are facts and evidence that support an inference of deliberate ignorance. United States v. McAllister, 747 F.2d 1273, 127 (9th Cir. 1984), cert. denied, ___ U.S. ___, 106 S.Ct. 92, 88 L.Ed.2d 76 (1985). The reason

> such an instruction should not be given in all cases is "because of the possibility that the jury will be led to employ a negligence standard and convict a defendant on the impermissible ground that he should have known [an illegal act] was taking place." United States v. Beckett, 724 F.2d 855, 856 (9th Cir. 1984) (per curiam). Silva argues that there was no evidence that he made a conscious effort to avoid learning of the contents of the bag. Silva contends that the government's evidence was that he was an active participant in the theft and that his evidence was that he had no knowledge of the contents of the bag until the postal inspectors came to his door. We agree with Silva on the facts of this case that the district court erred in giving a conscious avoidance instruction. However, given the overwhelming evidence of Silva's direct participation in the mail theft, we hold the error was harmless. See United States v. Nordstrom, 730 F.2d 556, 557 (8th Cir. 1984).

United States v. White, 794 F.2d 367, 371 (8th Cir. 1986).

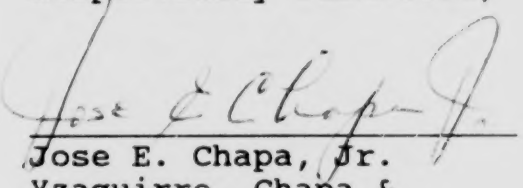
In the case at bar, as in White, Ureste was never shown to have "made a conscious effort to avoid learning" of the illegal possession; but

unlike White, Ureste was not shown by any evidence, "overwhelming" or otherwise, to have directly participated in the crime. Therefore, unlike White, the error in charge should not be considered harmless and the judgment should be reversed.

CONCLUSION

For the foregoing reasons, the Petitioner, Romeo Ureste, respectfully requests this Court to grant this petition and issue a writ of certiorari to the Fifth Circuit Court of Appeals.

Respectfully submitted,



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APPENDIX

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IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 87-2906

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROMEO URESTE,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CR-C-87-136)

(May 3, 1988)

Before WISDOM, RUBIN, and JONES, Circuit Judges.

RUBIN, Circuit Judge:*

When the driver of a semi-tractor hauling a trailer stopped at an immigration inspection station, the border patrol discovered a large quantity of marijuana hidden beneath an iced load of cabbages. Convicted of possession with intent to distribute, the driver contends that the evidence was insufficient to support the jury verdict and that the court erred in charging the jury on deliberate ignorance. Because the evidence, while not conclusive, must be weighed in a balance that favors the jury verdict and because the evidence warranted the charge given, we affirm the conviction.

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

I.

Romeo Ureste, driving a maroon Kenworth semi-tractor-trailer rig, arrived at the border patrol checkpoint near Falfurrias, Texas at 2:45 a.m. on Wednesday, April 29, 1987. A border patrol agent, Thomas W. Slowinski, was stationed at the primary inspection lane of the checkpoint with a dog, trained to sniff out contraband, beside him. Slowinski could see Ureste's forehead and observed that he was in "a complete sweat." His voice and speech were broken. "He was just completely nervous." Ureste would not look the agent in the eye and the agent thought that Ureste was paying no attention to him but "was completely fixed on the dog." Suspecting that "something was wrong," Slowinski asked Ureste to allow him to inspect the contents of the trailer. He found the vehicle loaded with cabbage, topped with a layer of ice. The cabbage

was loaded uniformly and neatly at the rear of the trailer but the load at the front end appeared "uneven and unstable," unlike the load in most produce trucks which is "nice and uniform."

Slowinski instructed Ureste to move the vehicle into the secondary inspection lane. He crawled into the trailer with the dog, crouching atop the ice. When they reached the front end of the trailer the dog signalled that he smelled contraband. Slowinski found plastic bags containing marijuana beneath the cabbage. He and his fellow agents unloaded 1500 pounds of marijuana, then sent the truck to a wholesale produce center so that, in accordance with usual procedure, the cabbage could be sold before it spoiled. When the cabbage was unloaded, plastic bags containing an additional 2000 pounds of marijuana were found.

The government charged Ureste with possession with intent to distribute approximately

689 kilograms of marijuana. At trial the government produced the evidence we have summarized and rested. Ureste asked for a directed verdict. After the motion was denied, Ureste adduced the testimony of a friend, Carlos D. Moreno, who said he had driven Ureste to a truck stop six miles north of Edinburg, Texas, on the night of April 28 because Ureste had just accepted a job driving a truck to Forth Worth and didn't have transportation to the place where he was to pick up the truck. Moreno testified that they drove to a 76 Truck Stop, found a maroon truck, looked inside the trailer, and saw a load of cabbage.

Ureste testified that on Sunday night, April 26, he had been shooting pool at the Midnight Bar in Edinburg. A man with whom he began playing pool, known to him only as "Joe," asked him what he did for a living. When Ureste responded that he was a truck driver, the stranger said "You know anybody who needs to work right now?"

Ureste said he did. The stranger said, "Well, I got a load going to Forth Worth." He asked for Ureste's phone number and said, "I'll call you about Monday or Tuesday."

On Tuesday night, Ureste testified, his phone rang. "It was him." The caller asked, "You ready to go to Forth Worth?" When Ureste said, "Yes, sir," the caller told him to go to the 76 Truck Stop about six miles north of Edinburg where he would find a maroon truck with the name F. Guajardo on its side. He also told Ureste there was money for gas in the glove compartment of the truck. Ureste's father had his truck, and his sister had his car, so he asked his friend Moreno to take him to the truck stop.

They found the truck at the stop. The invoice said "cabbage." Ureste opened the trailer doors and saw cabbage and ice. He then filled the tank with fuel, spending approximately $280, and started for Fort Worth at about 2:00 a.m. He

said "Joe" had agreed to pay him $400 for the trip although the usual pay for such a trip was $125 to $130. He did not explain how or when he was to be paid or how he obtained the keys to the vehicle. Presumably he found them in the ignition or elsewhere in the vehicle. His putative employer had apparently never asked him his name or address or inquired about a driver's license. The valuable equipment loaded with fresh produce was apparently left unattended, with keys aboard, in an unguarded lot at a truck stop.

At the request of the prosecutor, the court charged the jury on deliberate ignorance. Ureste objected to the charge but did not, at the conclusion of the case, move for a judgment of acquittal.

II.

On a challenge to the sufficiency of the evidence to support a jury's guilty verdict, the test is whether a rational trier of fact, viewing

the evidence and drawing all reasonable inferences in the manner most favorable to the verdict, could have found the defendant guilty beyond a reasonable doubt.[1] Because Ureste did not move for a judgment of acquittal at the conclusion of the evidence, however, the government contends that we should review the sufficiency of the evidence only to determine whether the verdict constitutes a manifest miscarriage of justice.[2] We pretermit the decision whether the standard more favorable to the government applies because the evidence was sufficient to pass even the less strict requirement.

To obtain a conviction for possession with intent to distribute, the government must prove

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[1]Glasser v. United States, 315 U.S. 60, 80, 62 S.Ct. 457, 469 (1942); United States v. Bell, 678 F.2d 547, 549 (5th Cir. Unit B 1982) (en banc), aff'd on other grounds, 462 U.S. 356, 103 S.Ct. 2398 (1983).

[2]United States v. Gammage, 790 F.2d 431, 435-36 (5th Cir. 1986).

knowledge, possession, and intent to distribute.[3] Ureste does not contest possession, but he asserts that he did not know the marijuana was in the trailer.

Read in the light most favorable to the verdict, the evidence was sufficient to support the jury's finding beyond a reasonable doubt that Ureste acted with knowledge. The border patrol agent testified not merely that Ureste was nervous but that he was nervous "far beyond any other person that I've ever checked there at the checkpoint." Under our decision in Williams-Hendricks, anxiety alone is inconclusive proof of knowledge because "[n]ervousness is a normal reaction to circumstances which one does not understand."[4] Ureste testified, however, that he had driven through the Falfurrias checkpoint

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[3]U.S. v. Williams-Hendricks, 805 F.2d 496, 500 (5th Cir. 1986).

[4]Id.

"[a] thousand times" before. The jury might reasonably have inferred, therefore, that he would not have been nervous unless he knew he was transporting contraband.

In United States v. Del Aguila-Reyes,[5] a panel of this court held that a jury might reasonably infer that a drug trafficker would not entrust an ignorant stranger with a valuable cargo of contraband. I dissented on the ground that "the inference that dupes who are unaware that they carry valuable cargo are less likely to steal it than witting accomplices appears to me equally tenable."[6] In this case, however, we need not rely on an inference from the value of the truck's hidden cargo. Ureste asked the jury to believe that "Joe" entrusted him with an expensive vehicle, a valuable load of cabbage, and a considerable amount of cash on the basis of

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[5] 722 F.2d 155, 157 (5th Cir. 1983).

[6] Id. at 158.

a chance meeting in a pool hall and without asking for his driver's license, full name, or address. The loaded vehicle, as we have noted, was left unattended in a truck stop. Ureste explained the amount of the fee he was promised, three times higher than average, by reference to Joe's story that the driver had taken ill and he needed a replacement driver to depart immediately lest the cabbage spoil. Ureste failed to explain, however, how "Joe" anticipated on Sunday, when he informed Ureste that he might have a job for him on Monday or Tuesday, that his driver would fall ill at that time. Ureste also did not testify how or when he was to be paid the $400 or where he found the keys to the truck. Finally, he said he owned a truck, a car, and a telephone, although he had not worked for six months and was unable to take a job away from home because his father was ill and he was his father's sole support. The jury might reasonably have wondered

how he managed to maintain himself and his family. Evidence that the defendant received a far-above-average sum for transporting the cargo accompanied by an implausible explanation by the defendant of the events that transpired may support a reasonable inference of guilty knowledge.[7]

The evidence we recite would by no means compel a jury to find Ureste guilty, but a rational jury might have concluded that Ureste was nervous with reason, that his account of how he came to be driving the rig was a fabrication, and that he knew of his illicit cargo.

III.

The district court included the following in its instructions to the jury:

> With respect to the issue of the defendant's knowledge in the case, if you find that the defendant made him-

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[7]United States v. de Luna, 815 F.2d 301, 302 (5th Cir. 1987); United States v. Ledezma-Hernandez, 729 F.2d 310, 314 (5th Cir. 1984).

> self deliberately ignorant of his knowledge of the marijuana, then under the circumstances as I outline to you, you may consider the element of knowledge as having been satisfied.
>
> If you find from all of the evidence beyond a reasonable doubt that Mr. Ureste believed that he possessed a controlled substance such as marijuana and deliberately and consciously tried to avoid learning that it was there in order to be able to say, if he should be apprehended, that he did not know that he possessed it, you may treat such deliberate avoidance of positive knowledge as the equivalent of knowledge. In other words, you may find that a defendant acted knowingly within the meaning of this law, if you find beyond a reasonable doubt either that the defendant actually knew that he possessed marijuana or that he deliberately closed his eyes to what he had every reason to believe was the fact.
>
> Now, I want to emphasize to you that the requirement that the government prove the defendant knew cannot be established by merely demonstrating that the defendant was foolish or careless or negligent.

Ureste does not challenge this instruction as an incorrect statement of law. Instead he contends only that the evidence did not warrant such an

instruction.

We have approved deliberate ignorance charges in cases analogous to this one. In United States v. Restrepo-Granda,[8]/ the defendant was carrying four-and-one-half pounds of cocaine concealed in specially designed and unusually heavy coathangers in a suitcase out of which he had lived during three days of travel. He entered this country with what he knew were illegal papers, and he refused to cooperate with the police in apprehending the people who were to meet him at the airport. In United States v. Rada-Solano,[9]/ the defendant was arrested carrying suitcases with cocaine concealed in their walls. The court characterized his story about how he came to possess the luggage as so complicated, vague, and contradictory as to support an

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[8]575 F.2d 524 (5th Cir. 1978), cert. denied, 439 U.S. 935, 99 S.Ct. 331 (1978).

[9]625 F.2d 577, 579-80 (5th Cir. 1980), cert. denied, 449 U.S. 1021, 101 S.Ct. 588 (1980).

instruction on deliberate ignorance. Similarly, in de Luna,[10] a case involving the same scheme and perhaps the same traffickers as were behind Ureste's failed shipment, the court underscored the defendant's incredible testimony that, "he did not own the truck, but had merely borrowed it from a friend whose last name he did not know, and that he had borrowed the money to buy the cabbage from yet another person. He was unable to account for the willingness of his employer to pay 10 or 15 thousand dollars for a trucking job that would ordinarily pay about one thousand, nor could he state where he was to deliver the cabbage."[11] Ureste's story may not have been quite as suspicious or implausible as these, but we hold the evidence we have already recounted sufficient to justify a charge to the jury that it might find Ureste guilty if it determined beyond

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[10] 815 F.2d 301.

[11] Id. at 302.

a reasonable doubt that he deliberately avoided discovering the actual, illegal nature of his undertaking.

For these reasons, the judgment is AFFIRMED.